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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket 92-266
	)	
Rate Regulation	)	

REPLY OF BELL ATLANTIC[1]
ON PETITIONS FOR RECONSIDERATION

1. Introduction and Summary

The comments filed by the cable incumbents on reconsideration once again demonstrate cable's determination to avoid any meaningful rate regulation, and to obtain preferential regulatory treatment that will give it an artificial advantage as cable moves rapidly into competition for traditional telephone services. The cable incumbents, however, base their claims not on reasoned statutory analysis or sound public policy grounds but primarily on predictions of impending doom if they are required to charge rates comparable to those that would be charged in a competitive marketplace. Their arguments are without merit and must be rejected.

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[1] The Bell Atlantic telephone companies ("Bell Atlantic") are The Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac telephone companies, The Diamond State Telephone Company, and New Jersey Bell Telephone Company.

2. The Commission Should Reject Claims That Use of a Competitive Benchmark Will Impede Cable's Viability

The cable incumbents repeat here their previous attacks on the use of a competitive benchmark. Their principal theme,[2] however, is that setting the benchmark at a truly competitive level will impede cable's ability to make additional investments, and even impede cable's very viability.[3] Stated another way, the cable incumbents claim that the industry is in jeopardy unless it can continue to earn monopoly profits. This argument, however, defies reality.

First, cable's argument ignores the fact that the competitive systems on whose rates the Commission has proposed to base its benchmark are themselves healthy, "viable" and undertaking new investments. The existence of these systems disproves any suggestion that the cable industry is in peril absent the ability to charge supra-competitive rates.

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[2] Cable's various attacks on the competitive benchmark have previously been rebutted by Bell Atlantic and others, both in the Commission's separate proceeding to establish an appropriate benchmark level, see, e.g., Joint Reply Comments of Bell Atlantic, et al. (filed July 2, 1993), and in these reconsideration proceedings, see, e.g., Opposition to Petitions for Reconsideration of King County, et al. at 11-21. As a result, Bell Atlantic's reply here will be limited to addressing cable's principal claim of harm to the industry if the benchmark is set at truly competitive levels.

[3] See, e.g., Opposition of NCTA at 3-8 ("NCTA Opp."); Opposition of Cole, Raywid & Braverman at 4-5; Opposition of Time Warner Entertainment at 14 ("TWE Opp."); Comments of Medium Sized Operators at 1.

Second, cable's argument ignores the purpose that will be served by the competitive benchmark. The benchmark serves only to establish a rate level below which cable rates will be presumed reasonable, and no further showing of reasonableness will be required.[4] It does not definitively establish the rate that cable operators will be permitted to charge. On the contrary, cable operators may justify rates above the benchmark through a cost of service showing -- a procedure designed to set cable rates at a level that will cover cable's costs plus provide a reasonable return.[5]

Third, cable's argument that it should be permitted to continue charging monopoly rates has been definitively rejected by Congress. In order to protect consumers from the exercise of market power, Congress directed the Commission to ensure that the rates of monopoly cable systems are no higher than they would be in a genuinely competitive marketplace.[6] Cable's continuing efforts here to escape that Congressional directive are unavailing.

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[4] Rate Regulation, MM Dkt 92-266, Order at 185-188 (rel. May 3, 1993).

[5] Rate Regulation, MM Dkt 93-215, Notice of Proposed Rulemaking at 7 (rel. July 16, 1993).

[6] See 47 U.S.C. § 543(b)(1).

3. The Commission Should Reject Claims That It Is Barred From Establishing Regulatory Parity Between The Telephone and Cable Industries

According to the cable incumbents, the Commission cannot apply rules to cable that parallel those that already apply to telephone companies.[7] They base this assertion on two arguments, both of which are wrong.

First, cable claims that the statute and legislative history bar the Commission from imposing rules on cable that parallel those for telephone companies. This claim is based on a provision of the 1984 Cable Act that says cable should not be regulated "as a common carrier" solely by reason of its providing cable service,[8] and on a snippet from the House Report on the 1992 Act that says the Committee did not intend to "replicate Title II regulation."[9]

But neither the Commission's rules nor the modifications proposed by Bell Atlantic would make cable operators common carriers, nor would they result in wholesale replication of the regulations that apply to common carriers

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[7] See, e.g., TWE Opp. at 11-14; Opposition of Viacom at 3-6; Opposition of Cablevision Industries, et al. at 6-7.

[8] 47 U.S.C. § 541(c).

[9] H.R. Rep. No. 628, 102d Cong., 2d Sess. 83 (1992).

under Title II.[10] Moreover, nothing in the statute or legislative history bars the Commission from drawing on lessons learned from decades of regulating telephone rates, nor do they bar the Commission from establishing parallel rules where necessary to avoid artificially favoring or handicapping one industry over another.

Second, the cable incumbents assert that supposed differences in the investment patterns and financial structures of the two industries warrant different regulatory treatment. Even the cable incumbents, however, do not seriously dispute that the two industries are actually investing in the same technologies as they upgrade their networks with fiber optics and other advanced technologies. And as Bell Atlantic previously showed, the financial differences cited by cable are either irrelevant or actually weigh in favor of applying to cable the same rules that apply to telephone companies.[11]

In short, cable has the matter precisely backwards. Given the increasing convergence of the cable and telephone industries, the Commission cannot arbitrarily distinguish between

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[10] For example, cable rates would still be judged as an initial matter against a competitive benchmark -- a process that has no parallel in the Commission's rules for telephone companies and that will reduce the regulatory burden imposed on cable operators whose rates are at or below the benchmark.

[11] See Reply Comments of Bell Atlantic, MM Dkt 92-266, App. at A-1 to A-5 (Feb. 11, 1993).

these similarly situated competitors and its rules should be modified to the extent they already grant preferential treatment to cable.

4. The Commission Should Apply The Same Price Cap Rules To Cable That Apply To Telephone Companies

In particular, as Bell Atlantic demonstrated in its petition, the price cap rules for cable should be modified in two respects to bring them into line with the rules for telephone companies. First, until the rules for telephone companies are modified, cable should be subject to a sharing obligation to the same extent as telephone companies.[12] Second, cable operators should be permitted to pass through "external" costs only to the extent telephone companies can do the same.[13]

According to the cable incumbents, however, requiring cable operators to comply with the same rules as telephone companies will act as a disincentive to investment and technological innovation.[14] As a result, cable argues not only that it should be given preferential treatment compared to telephone companies, but even goes so far as to argue that all identifiable cost increases should be passed through to

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[12] Bell Atlantic Pet. at 3-4.

[13] Id. at 5-6.

[14] TWE Opp. at 14-18; NCTA at 6-10.

consumers.[15] In particular, cable argues that it should be permitted to pass through all programming costs as well as the costs of any network upgrades.

The cable incumbents are wrong at every turn. As the Commission previously found, applying price caps in the absence of competition will actually spur deployment of new technologies and improved productivity by duplicating the incentives of a competitive marketplace.[16] In contrast, automatically permitting any and all cost increases to be passed through in higher rates as cable urges would eliminate any incentive to improve efficiency and merely result in ever increasing rates for consumers.

Moreover, contrary to cable's claims, cable operators have just as much control over their programming costs as telephone companies have over materials obtained from third party vendors, such as network equipment.[17] Cable operators also have just as much control over the cost of their network upgrades as do telephone companies. As a result, treating these types of costs as external for cable when they would not receive similar

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[15] NCTA Opp. at 6.

[16] Order at 145-47.

[17] In fact, to the extent cable operators obtain programming from affiliated programmers, they actually have greater control over their costs.

treatment under the price cap rules for telephone companies cannot be justified.

5. The Commission Should Apply The Same Rules To Cable CPE That Apply To Telephone CPE

Finally, commenters who argue that the Commission should not require cable operators to provide CPE on an unbundled basis are wrong.

These commenters argue that unbundling cable CPE and regulating it based on cost (as directed by the statute) will stifle development of innovative equipment.[18] The opposite, however, is true. By requiring cable operators to provide this equipment on an unbundled, competitive basis, the Commission's rules will foster the development of a competitive market and actually promote -- rather than hinder -- increased innovation and consumer choice. Moreover, the development of a competitive market for this equipment will serve to keep rate levels close to "actual cost" and eliminate the need for ongoing rate regulation of cable CPE.

In addition, these same commenters argue that bundling should be permitted because some cable CPE and the cable services

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[18] Comments of General Instrument Corp. at 8-12.

provided over that equipment are "inextricably interdependent."[19] But the same is true of telephone CPE and telephone services. Nonetheless, the Commission's solution has not been to permit CPE to be bundled with telephone service, but rather to impose network disclosure requirements.[20] Applying these same rules to cable will address this concern.

In short, as Bell Atlantic pointed out in its petition, the Commission should modify its rules for cable CPE only to the extent necessary to bring them into line with its rules for telephone CPE.[21]

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[19] Id. at 12-19.

[20] See Furnishing of Customer Premises Equipment, etc., 2 FCC Rcd 143, 148-51, on recon., 3 FCC Rcd 22 (1987), aff'd, Illinois Bell Tel. Co. v. FCC, 883 F.2d 104 (D.C. Cir. 1989).

[21] Bell Atlantic Pet. at 6-7.

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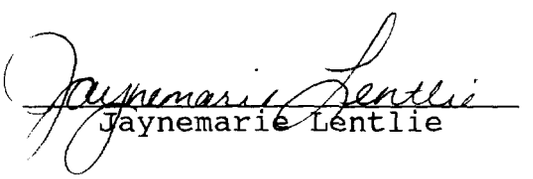
August 5, 1993

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Reply of Bell Atlantic on Petition for Reconsideration" was served this 5th day of August, 1993, by delivery thereof by first class mail, postage prepaid, to the parties on the attached list.



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